

Agenda Item	
A-1	No one wished to be heard during the Open Comment Period.
B-1	President John Hunziker called the meeting to order at 7:00 P.M. with the following members present: Councilmembers Dennis Hanson, Marcia Marcoux, Jean McConnell, Sandra Means, Bob Nowicki, Walter Stobaugh. Absent: None. Also present: Mayor Ardell F. Brede.
D-1-24	Councilmembers Hanson moved, Stobaugh seconded, to approve the following consent agenda items.
D-1	Approved the minutes of the October 20, 2003, Council Meeting.
D-2	Approved the appointment of the following individuals to the City Planning & Zoning Commission with terms to expire on December 31, 2006: Paul Ohly, Lisa Wiesner, James Burke, Ivahn Dockter, and to approve the appointment of Michael Busch to the Rochester Zoning Board of Appeals with the term expiring on December 31, 2006.
D-3	Approved the following licenses and miscellaneous activities: <u>Gambling – Temporary</u> Chorale Arts Ensemble – Raffle at Marriott Hotel – February 7, 2004. <u>Revocable Sign Permit</u> Holy Spirit School – Craft Sale – November 15 & 16, 2003 – signs along 55 th Street N.W. <u>Miscellaneous</u> Gamehaven Council Boys Scouts of America – Ten Commandments Hike – November 15, 2003. Francis J. Mueller – Daughter's Wedding Party with antique tractors pulling wagon – November 1, 2003. (Prior approvals: Nowicki, McConnell, Stobaugh, Marcoux, Hunziker)
D-4	Approved Accounts Payable in the amount of \$6,554,497.73 and Investment Purchases of \$1,000,000.00.
D-5	Adopted Resolution No. 568-03 accepting the proposal from Smith, Schafer and Associates, Ltd. for audit services for the City of Rochester for the years ending December 31, 2003, 2004, and 2005.
D-6	Adopted Resolution No. 569-03 approving the advertising of bids for Anhydrous Ferric Chloride and Liquid Aluminum Sulfate.
D-7	Adopted Resolution No. 570-03 approving the Wetland Delineation and Replacement Plan for Kingsbury Hills 4 th .

RECORD OF OFFICIAL PROCEEDINGS OF THE COMMON COUNCIL
CITY OF ROCHESTER, MINNESOTA
Regular Meeting No. 26 – November 3, 2003

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D-8	Adopted Resolution No. 571-03 approving Resolution No. annexing approximately 2.97 acres of land located north of 30 th Avenue S.E., along the west side of Marion Road S.E., know as the Priebe Stables.
D-9	Adopted Resolution No. 572-03 approving to apply for and accepting a FY 2003 Local Law Enforcement Block Grant in the amount of \$39,512 with a cash match from the contingency fund.
D-10	See at end of D Items.
D-11	Accepted \$25 donation from Katherine Piderman to be used by the Rochester Department Police Canine Unit.
D-12	Accepted the donation of \$1500 from Sam's Club Foundation for the Rochester Police Department Crime Prevention unit for neighborhood watch activities.
D-13	See at end of D Items.
D-14	Adopted Resolution No. 573-03 approving the parking agreement with Olmsted County for the Jurors Lot on the South Side of 4 th Street S.E.
D-15	Adopted Resolution No. 574-03 amending the assessments for Project No. J-9714 "Driveway and Service Lines at 802 23 rd Avenue S.W." and authorizing execution of the assessment agreements for the property.
D-16	Adopted Resolution No. 575-03 authorizing execution of the City/Owner Contract with Richard R. Arend and Carol M. Arend and Fraser Construction, Incorporated for Project No. J-5096 "Watermain and Hydrant to Serve A & A Mini Storage".
D-17	Adopted Resolution No. 576-03 accepting voluntary participation by Second Street Mall, The Sand Trap, Christ Community Church and Eric's Bar & Grill in the City's Stormwater Management Program.
D-18	Adopted Resolution No. 577-03 authorizing execution of the Amended City/Owner Contract with RJY Development, Incorporated and Winona Mechanical, Incorporated for Project No. J-9878 "Basic Construction Salem Heights Townhomes CIC#206".
D-19	Adopted Resolution No. 578-03 authorizing execution of the City/Owner Contract with DeGeus Properties LLC and Friedrich Construction for Project No. J-5108 "Sanitary Sewer and Watermain to Serve DeGeus Tile".
D-20	<p>Adopted Resolution No. 579-03 amending the <u>Comprehensive Parking and Traffic Resolution Book</u> as follows:</p> <p>Add Paragraph 10.1 to Section I, Zone E – 90 Minute Meters so as to read as follows:</p> <p>1st Avenue SE on both sides from East Center to 2nd Street SE, space numbers 63-0 through 63-19, 64-53 through 64-58, 69-0 through 69-8.</p>

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	<p>Delete Paragraph 3.2 of Section H, Zone F-2 Hour Parking pertaining to the east side of the 500 block of 3rd Avenue SW.</p> <p>Amend Paragraph 11.0 of Section I, Zone J – 10 Hour Meters so as to read as follows: 3rd Avenue SW on both sides from 4th Street SW to 6th Street SW, space numbers 102-0 through 102-12, 103-50 through 103-50, 112-50 through 112-57, 113-0 through 113-5.</p> <p>Amend Paragraph 17.0 of Section I, Zone J – 10 Hour Meters so as to read as follows: 6th Street SW on both sides from 1st Avenue SW to 2nd Avenue SW, space numbers 109-25 through 109-31, 119-77 through 119-70, 119-82 through 119-84.</p> <p>Add paragraph 130.1 to Section B No Parking Zones so as to read as follows: 6th Street SW on the south side from 2nd Avenue SW east approximately 75' including spaces 119-75 and 119-76.</p>
D-21	<p>Adopted Resolution No. 580-03 amending the <u>Comprehensive Parking and Traffic Resolutions Book</u> to read:</p> <p>Amend Paragraph 14 of Section I Zone J – 10 Hour Meters to read as follows: 4th Avenue SW on both sides from 4th Street to 5th Street.</p>
D-22	<p>Adopted Resolution No. 581-03 approving Change Order No. 3 to the Foster Electric Company's contract for the Engine Generator Replacement Project increasing the amount by \$12,304.61 and adding 30 days to the scheduled final completion date.</p>
D-23	<p>Adopted Resolution No. 581A-03 approving the "Alarmed and Alert Grant" for the fiscal year 2003-2004 from the Minnesota Initiative to prevent residential fire related injuries for smoke detectors and educational materials.</p>
D-24	<p>See at end of D Items.</p> <p>Ayes (7), Nays (0). Motion carried.</p>
D-10	<p>Mayor Brede wanted to recognize the fourth grade class at Ben Franklin, taught by Holly Evans, for raising money through a car wash and donating the money to the Canine Unit of the Police Department.</p> <p>Councilmembers Marcoux moved, McConnell seconded, to accept \$87 donation from the fourth grade class at Ben Franklin to be used by the Rochester Department Police Canine Unit. Ayes (7), Nays (0). Motion carried.</p>
D-13	<p>Councilmember McConnell asked what the collection agency keeps for fees collected for overdue books from the Library and at what point does the collection occur.</p>

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	<p>Audrey Betcher, Library Director, said that after two to three notices are sent and the amount of the fees is in excess of \$50.00 the collection agency becomes involved. The offender then has 60 days to pay. There is a \$15 collection fee of which \$9 is kept by the agency for their service. The collection can be stopped by the Library whenever needed. Ms. Betcher said that for lost items over one year old and overdues over two years old have amounted to \$70,000. She said that the Library is hoping to get more lost materials returned as some are replaceable.</p> <p>Councilmembers McConnell moved, Hanson seconded, to adopt Resolution No. 582-03 approving the contract with Unique Management Services to collect fees associated with overdue materials from the Rochester Public Library. Ayes (7), Nays (0). Motion carried.</p>
D-24	<p>Terry Adkins, City Attorney, asked for an explanation of the Revocable Permit for No-Build Permit for Rochester City Lines. He was uncomfortable with the issuance of a no-build permit.</p> <p>Mike Nigbur, Public Works Department, said that Rochester City Lines owns property that abuts City property. Rochester City Lines plans to construct a building. Under the building code requirements, these buildings are not fireproofed so a ten-foot buffer must be maintained where no construction can occur. With the issuance of the permit, the City could someday require that the ten-foot buffer be returned to them and Rochester City Lines would be required to fireproof the buildings.</p> <p>It was agreed that the City Attorney and the Public Works Department would review the matter further with the understanding that there might be the need for a formal agreement.</p> <p>Councilmembers Hanson moved, Nowicki seconded, to approve the issuance of the required permit or the execution of an agreement to allow Rochester City Lines to secure the needed ten-foot buffer until such time as the land is needed by the City of Rochester. Ayes (7), Nays (0). Motion carried.</p>
E-1	<p>A Continued Hearing on Final Plat #03-28 by GAC Theaters, Inc. to be known as Chateau Second Replat located along the north side of East Circle Drive NE, east of TH63.</p> <p>Councilmembers McConnell moved, Marcoux seconded, to table the hearing to the end of the meeting to determine if the applicant would waive the 60-day requirement if the hearing was continued to November 17, 2003.</p>
E-2	<p>A Hearing on Land Use Plan Amendment Petition #03-05 by Forbrook-Bigelow Development to amend the Land Use Plan designation from Low Density Residential to Commercial on property located along the south side of 7th Street N.W. and along the east side of West Circle Drive and north of Lake Street N.W.</p> <p>Wishing to be heard was Andy Masterpole, McGhie & Betts, representing the developer. Mr. Masterpole noted that his comments also pertain Item E-3 on</p>

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rezoning of the property. Mr. Masterpole said that the proposal is for upscale townhomes on 13 acres of land rezoned from R-1 to R-1x and commercial on 2.4 acres of land rezoned from R-1 to B-4. The project is in proximity to single family homes. Based on the 1979 Land Use Plan, this property was slated for residential development. He said that the age of the document and what is happening along Circle Drive might allow for an exception. There is good vehicular access and is located at the corner of a collector road and an expressway. He noted that because of concerns with the neighborhood, the developer would be willing to rezone the commercial to B-1 rather than B-4.

Wishing to be heard was Eric Alter, 3330 Lakeridge Drive N.W. Mr. Alter was in opposition to the project. He said that the neighborhood does not want B-4 which would bring in commercial business like convenience gas stations that would run 24-hour operations. The traffic is a problem and would become more of a problem. Access onto West Circle Drive is also a problem with a limited sight distance; a lot of vehicular traffic.

Wishing to be heard was Haddon Carryer, 3324 Lakeridge Drive. He said that the owner of the development bought the property knowing that the area was a residential neighborhood. He said that the owners want to retain the character that exists. The area is not conducive to a commercial business. Property values will be lowered and the enjoyment of each owner's property will go down. Mr. Carryer suggested that a possible B-5 very restrictive zone be approved for the commercial if it has to be retained.

Wishing to be heard was Lyle Karstens, 3333 Lake Street N.W. He said that he was appreciative of the changes that the developer has already made on behalf of the residents. Mr. Karstens said it was common sense, if expensive townhomes are being built, they won't want the commercial property either. If they want to attract the type of people that they want living in the neighborhood, then the commercial property should be conducive to it.

Wishing to be heard was Erik Propotnik, 3525 Seventh Street N.W. His home is across Circle Drive from the proposed development and is visible from his front window. If the businesses are facing to the east, the back of the buildings will be visible to his home. Mr. Propotnik was concerned about resale value of his home as well as those homes surrounding the proposed development. Commercial property is available at other locations in close proximity.

Wishing to be heard was H. W. Swanson, 3415 Seventh Street N.W. Mr. Swanson said that businesses in the B-4 zone would reduce the value of his property. The traffic will be backed up even further on Seventh Street. The traffic is already hazardous with the amount of cars running the red light. Several serious accidents have already happened. If houses were put into the commercial property area, berms could be erected to block the view of West Circle Drive. He said that the commercial development will generate too much traffic.

Wishing to be heard was John Reynolds, 3524 Sixth Place N.W. Mr. Reynolds said that the development is next to his backyard. He said that the development of the

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townhomes is great for a residential development. However, the commercial, whether B-4 or B-1, is not practical. The intersection and frontage road is a high traffic area. The frontage road accesses the furniture store, the flower shop, and the insurance shop. Adequate parking was a requirement for these businesses. However, all the employees park on Sixth Place. There is only one lane to get in and out. He asked that the Council uphold the staff recommendations not allowing commercial.

Having no one further wishing to be heard, President Hunziker closed the hearing.

Councilmember McConnell asked if a B-5 zone change would be acceptable to the developer. Andy Masterpole, McGhie & Betts, replied that it would be workable if it were back in the development. However, along West Circle Drive with the stop light, this is a prime location for a commercial development. There would be a limitation on the intensity of use because it is only 2.4 acres.

Councilmember Hanson asked Mr. Masterpole if a Special District had been considered. Mr. Masterpole said he didn't think it was necessary in this instance. Phil Wheeler, Planning Department Director, said that the Land Use Plan encourages mixed-use development in B-5 districts. For 2.4 acres, he didn't think that a special district should be created. Mr. Wheeler said that if the Council thinks that there are special uses that should be allowed in residential areas, they should consider amending current ordinances and adding to the uses allowed in the B-5 district.

Councilmember McConnell moved, Hanson seconded, to approve Land Use Plan Amendment Petition #03-05 by Forbrook-Bigelow Development to amend the Land Use Plan designation from Low Density Residential to Commercial. Ayes (3), Nays (4). Motion failed. Upon roll call vote Councilmembers Hanson, McConnell and President Hunziker voted aye, Councilmembers Marcoux, Means, Nowicki, and Stobaugh voted nay.

Councilmembers Marcoux moved, Nowicki seconded, to deny the requested land use change from residential to commercial for Land Use Plan Amendment Petition #03-05 by Forbrook-Bigelow Development and adopting the Findings of Fact recommended by the Planning Commission. Ayes (4), Nays (3). Councilmembers Hanson, McConnell and President Hunziker voted nay.

E-3

A Hearing on Zoning District Amendment #03-19 by Forbrook-Bigelow Development to rezone from R-1 to R-1x on property located along the south side of 7th Street N.W. and along the east side of West Circle Drive and north of Lake Street N.W.

Wishing to be heard was Andy Masterpole, McGhie & Betts, representing the developers. He stated that they are planning on townhomes into an R-1x district. Mr. Masterpole said that a higher density of townhomes could have been possible but they are committed to preserving as many of the trees as possible and preserving the buffer to the proposed commercial areas. He asked for approval of the zone change from R-1 to R-1x.

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Wishing to be heard was John Reynolds, 3524 Sixth Place N.W. He urged the Council to approve the zone change from R-1 to R-1x. Mr. Reynolds thought the proposed development was well done and was only opposed to the commercial part of the development.

Wishing to be heard was Haddon Carryer, 3324 Lakeridge Drive. Mr. Carryer supported the change for the townhomes with one exception. He said that at the original meeting with the neighbors, the driveway entrance to the townhouses was further west and closer to the commercial property. He asked that the entrance be where it was originally intended rather than closer to the residential area on the north.

Wishing to be heard was Andy Masterpole, McGhie & Betts. Mr. Masterpole said that the townhouse secondary access was a City requirement and was moved from the original point because of the steep driveway slope from the townhome units. Moving the access to the townhomes further to the west would place it in the curve of the road which would be unacceptable to the Public Works Department.

Wishing to be heard was Lyle Karstens, 3333 Lake Street N.W. He noted that he supported the overall concept. He lives at the bottom of the hill, has enjoyed the wildlife and had been concerned about what the developers would do. He urged the Council to approve the R-1x zoning change.

Wishing to be heard was Haddon Carryer, 3324 Lakeridge Drive. Mr. Carryer pointed out that page 8 of the Planning Commission minutes noted his concern with the access from the townhome property being closer to the neighborhood.

Wishing to be heard was Mike Paradise, Bigelow Enterprises, 706 County Road 3. He said that they have made an effort to change the development to be more favorable to the neighbors. The secondary access to the townhomes cannot be placed on a steep curve for safety reasons. Mr. Paradise said that the density of the development has been kept down. In past practice, the hill would have been leveled, a high density of townhomes or low-income housing would have been built as an apartment complex on the corner. The reason for the commercial was to provide businesses that would be used by everyone in the neighborhood. He said that it is in the best interests of the neighborhood to keep the commercial and the upscale townhomes.

Wishing to be heard was H. W. Swanson, 3415 Seventh Street N.W. He said that Mr. Paradise is talking about the development of the townhomes as a "jewel". The developer has proposed a berm to block the townhomes from the commercial. But there is nothing to block the rest of the neighborhood from the commercial.

Phil Wheeler, Planning Department, said that past practice does not have the Council amending the property to a district for which the applicant has not applied and agreed to. The property is R-1 and will remain R-1 until the applicant applies for something else. In the residential classification, it could be zoned R-1, R-1x, R-2 or B-5. He said that the Council can proceed with the zone change to R-1x

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	<p>unless the applicant suggests that R-1x, R-2 or B-5 would be an acceptable substitute to B-4 or B-1.</p> <p>Wishing to be heard was Andy Masterpole, McGhie & Betts. In talking to the applicants, they view the development, with the commercial, as an entire proposal. Without the commercial, they may change the residential area. He asked if the item could be continued to December 1, 2003, and agreed to waive the 60-day rule between now and December 1, 2003.</p> <p>Councilmembers Hanson moved, Nowicki seconded, to continue to December 1, 2003, Zoning District Amendment #03-19 by Forbrook-Bigelow Development. Ayes (7), Nays (0). Motion carried.</p>
E-4	<p>A Hearing on General Development Plan #217 to be known as Oakridge Manor by Forbrook-Bigelow Development, a Substantial Land Alteration and Design Modification #03-18 on property located along the south side of 7th Street N.W. and along the east side of West Circle Drive and north of Lake Street N.W.</p> <p>Wishing to be heard was Andy Masterpole, McGhie & Betts, representing the developers, requesting that the hearing be continued to December 1, 2003, and acknowledging their waiver of the 60-day requirement.</p> <p>Councilmembers Nowicki moved, McConnell seconded, to continue the hearing on to General Development Plan #217 to be known as Oakridge Manor by Forbrook-Bigelow Development, a Substantial Land Alteration and Design Modification #03-18 to December 1, 2003. Ayes (7), Nays (0). Motion carried.</p>
E-5	<p>A Hearing on Amendment to General Development Plan #140 to be known as Fairway Ridge by Silvercrest Properties on property located along the east side of West Circle Drive, south of Country Club Road and north of the FoxCrest Development.</p> <p>Wishing to be heard was Josh Johnson, McGhie & Betts, representing the applicant. He noted agreement with the six conditions. In response to a question from Councilmember Marcoux, Mr. Johnson acknowledged that they would be working in coordination with Olmsted County to provide a turn lane from West Circle Drive into the complex. He said that the road improvements would be built to coincide with the completion of the 52-unit apartment complex.</p> <p>Having no one further wishing to be heard, President Hunziker closed the hearing.</p> <p>Councilmembers Nowicki moved, McConnell seconded, to approve the Amendment to General Development Plan #140 to be known as Fairway Ridge by Silvercrest Properties with six conditions and instructed the City Attorney to prepare Findings of Fact, Conclusions of Law, and Order. Ayes (7), Nays (0). Motion carried.</p>
E-6	<p>A Hearing on Land Subdivision Permit #03-32 by LBJ Development to be known as Tyrol Hills Second Subdivision located east of the East Frontage Road for TH63, north of Woodbine Street SE and south of Ziegler.</p>

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	<p>Wishing to be heard was Bill Anderson, Yaggy-Colby Associates, representing the applicant. He noted agreement with the seven conditions. Having no one further wishing to be heard, President Hunziker closed the hearing.</p> <p>Councilmembers Hanson moved, Stobaugh seconded, to approve Land Subdivision Permit #03-32 by LBJ Development to be known as Tyrol Hills Second Subdivision with seven conditions and instructed the City Attorney to prepare Findings of Fact, Conclusions of Law, and Order. Ayes (7), Nays (0). Motion carried.</p>
E-7	<p>A Hearing on Final Plat #03-37 by DLT Partners LLC to be known as Vilas on the Parkway CIC 239 located west of West River Parkway N.W., east of Third Avenue N.W.</p> <p>Wishing to be heard was Bill Anderson, Yaggy-Colby Associates, representing the applicant. He noted agreement with the six conditions. Having no one further wishing to be heard, President Hunziker closed the hearing.</p> <p>Councilmembers Means moved, Nowicki seconded, to adopt Resolution No. 584-03 approving Final Plat #03-37 by DLT Partners LLC to be known as Vilas on the Parkway CIC 239 with six conditions. Ayes (7), Nays (0). Motion carried.</p>
E-8	<p>A Hearing on Type III, Phase I, Appeal #03-03 of the Rochester Zoning Board of Appeals denial on August 6, 23003, of Variance Request #03-14 by Albert Czaja and Herschel Carpenter Czaja for the placement of a free standing wall located at 525 Ninth Avenue N.W.</p> <p>Wishing to be heard was Bill Ryan, 728 28th Street N.W., Attorney with Dunlap & Seeger, representing the applicant. Mr. Ryan presented a slide show showing the rebuilt stone fence bordering the property. He said that there were three reasons the Planning Commission denied the variance for the Czaja's. The first, and the only reason that the variance needed to be applied for, was the five-foot setback requirement. If the fence had been rebuilt with the setback requirement, the fence would have been placed so as to not allow for any yard space. The second reason was that the fence exceeded six feet. Mr. Ryan explained that the hedge that had previously been next to the fence was greater in height than the six feet. Without rebuilding the wall, there is a hardship due to lack of privacy from the street. The third reason was traffic visibility. The new wall is lower than the old hedge and, therefore, does not cause a visibility problem. Part of the wall that was rebuilt borders the alley. They had problems with parts of the wall falling. Rebuilding improved the appearance of the alley and made it more accessible. He said that the wall that was built is not detrimental to the public welfare and the variance denial should be overturned.</p> <p>Wishing to be heard was Olga Leontovich, 913 36th Street S.W. Mr. Leontovich said that she has heard many remarks on the beautiful wall and the exceptional work on the Czaja's property. She asked that the Council grant the variance.</p>

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	<p>Wishing to be heard was Bonnie Shaft, 433 Ninth Avenue S.W. She said that she has lived on the block for many years. The Czajas are exceptional people and work hard at keeping up their property. By doing so, the property values in the neighborhood are maintained. Ms. Shaft said she would hate to have someone punished for maintaining their property and keeping up the character of the neighborhood.</p> <p>Wishing to be heard was Laura Beaupre, 1104 Sixth Street S.W. Ms. Beaupre questioned the fact that the Czajas are getting the variance after the fact. She noted that Randy Klement from the Planning Department said that the variance needs to be obtained prior to the work to insure compliance with building codes. The builders and other trades people need to check into ordinances before doing any work.</p> <p>Wishing to be heard was Bill Ryan, Attorney from Dunlap & Seeger. He stated that someone had checked on a building permit and was told that a wall six feet or under was exempt from the building permit requirements.</p> <p>Wishing to be heard was Charles Mullany, 925 Sixth street S.W., owner of the property on the opposite side of the alley. He said that they have been good neighbors and have taken great care of the property. The wall has enhanced the neighborhood and improved the alley. This area was placed on the historical register in 1990.</p> <p>Having no one further wishing to be heard, President Hunziker closed the hearing.</p> <p>Councilmembers Hanson moved, Marcoux seconded, to overturn Appeal #03-03 of the Rochester Zoning Board of Appeals denial on August 6, 23003, of Variance Request #03-14 by Albert Czaja and Herschel Carpenter Czaja and incorporate the findings presented by Bill Ryan located on pages 186 and 187 of the Request for Council Action as findings. Ayes (7), Nays (0). Motion carried.</p>
E-9	<p>A Hearing on Type III, Phase I, Appeal #03-04 of the Rochester Planning and Zoning Commissions denial on September 10, 2003 of Variance Request #03-19 by Willow Creek Commons LLC to allow for a reduction in the required landscape plantings on property located along the west side of TH63 and along the south side of 40th Street S.W.</p> <p>Wishing to be heard was John Dietrick, RLK Kuusisto, Minnetonka, representing the property owners of Willow Creek Commons and Frank Kottschade. Mr. Dietrick said that they were appealing the requirement of 8 deciduous and 8 evergreen trees from the City's approved plant listing for each disturbed acres and 25 percent of required trees planted within 30 feet of perimeter of the site. The area is primarily a farm site. The requirement of 16 trees per acre would equate to approximately 1104 trees to be placed on the site. They consider that to be a hardship. The requirement is that the trees are to be placed on the entire 69 acres at the conclusion of the grading, prior to the development of the site moving forward. Mr. Dietrick said that they are asking the Council to approve the adjustment of the primary request variance to the Planning Commission. At that</p>

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meeting they requested the complete removal of the 16 trees per acre across the site. Mr. Dietrick made reference to the landscaping on the Marketplace site on the north side of Rochester. That site of about 53 acres has approximately 22 plantings per acre of various sizes of trees. There are 5.2 trees of ornamental and conifer. Those equate to approximately 279 trees and approximately 1167 plants. They requested that within the area of the Willow Creek Commons, even though it is a farm field today, that the same type of requirement as for Marketplace be placed in the entire 69 acres of the site. It would total approximately 1500 plantings of 359 trees across the 69 acres. The trees would be applied toward the future land use once a development comes forth and not placed in 25 percent of the perimeter of the site.

Brent Svenby, Planning Department, noted that there is an approved quarry operation to the south, known as the West 80 Development. They are required to adhere to the same reclamation standards as far as 8 deciduous and 8 evergreen trees per disturbed acres that have been applied to this development.

Terry Adkins, City Attorney, asked if the property to the south is required to have 25 percent of the required trees planted within 30 feet of perimeter of the site. Mr. Svenby answered yes. Mr. Adkins then asked when the plantings are to occur.

Wishing to be heard was John Dietrick, RLK Kuusisto. He noted that the Planning Commission allowed the Willow Creek Commons plantings to occur at such time that final development plans are submitted or within five years of the permit issuance. He said it was his understanding that there would be a five-year window. If a development does not come forward, the plantings must go in. There is an area in the southeast corner of the site, consisting of about 20 percent of the site, that may become a quarry.

Councilmembers Stobaugh moved, Marcoux seconded, to uphold the findings of the Planning Commission located on page 221 of the Request for Council Action on denial of Appeal #03-04 of the Rochester Planning and Zoning Commissions denial on September 10, 2003 of Variance Request #03-19 by Willow Creek Commons LLC. Discussion. The motion was withdrawn by general consensus as the hearing had not been closed.


Councilmember McConnell commented that he felt that the request by the developer for 359 trees as opposed to the requirement of 1104 trees was sufficient. He said that you don't want too many trees on a site; it is as bad as too few. All developments don't have to be the same.

Phil Wheeler, Planning Director, said he understood that the Council's concern was the requirement of too many trees. The applicants have 14 years to change the standard for their project and all quarries. The new standards could apply to conditional uses that had been previously approved.

Councilmember Hanson asked Brent Svenby when the trees have to be planted. Mr. Svenby replied that the Willow Creek Commons quarry operation is for nine years with trees planted after that. The Planning Commission provided for five

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	<p>years within the date of the permit issuance for the planting of trees in the development.</p> <p>Having no one further wishing to be heard, President Hunziker closed the hearing.</p> <p>Councilmembers Hanson moved, Marcoux seconded, to uphold the findings of the Planning Commission located on page 221 of the Request for Council Action on denial of Appeal #03-04 of the Rochester Planning and Zoning Commissions denial on September 10, 2003 of Variance Request #03-19 by Willow Creek Commons LLC and direct staff to review the issue of the number of trees required in a quarry operation and bring the matter back to the Council for further consideration. Ayes (6), Nays (1). Motion carried. Councilmember McConnell voted nay.</p>
E-1	<p>A Continued Hearing on Final Plat #03-28 by GAC Theaters, Inc. to be known as Chateau Second Replat located along the north side of East Circle Drive NE, east of TH63.</p> <p>Councilmembers Nowicki moved, Stobaugh seconded, to remove Final Plat #03-28 by GAC Theatres, Inc. from the table. Ayes (7), Nays (0). Motion carried.</p> <p>Gary Neumann, Assistant City Administrator, noted that a letter was received from the applicant waiving the 60-day rule for continuation of the hearing.</p> <p>Councilmembers Marcoux moved, Hanson seconded, to continue to November 17, 2003, the continued hearing on Final Plat #03-28 by GAC Theaters, Inc. to be known as Chateau Second Replat. Ayes (7), Nays (0). Motion carried.</p>
G-3a	<p>An Ordinance Rezoning Approximately 33.48 Acres of Property From the I Zoning District to the M-1 Zoning District, and Amending Ordinance No. 2785, Known as the Zoning Ordinance and Land Development Manual of the City of Rochester, Minnesota, was given a second reading. Councilmembers Hanson moved, McConnell seconded, to adopt the Ordinance as read. Ayes (7), Nays (0). Motion carried. (Zoning District Amendment #03-09 – west side of Highway 63, east of East River Road NE, north of 41st Street NE.)</p>
G-3b	<p>An Ordinance Creating and enacting Chapter 64O and Amending and Reenacting Section 60.327 of the Rochester Code of Ordinances, Relating to the Establishment of the Pebble Creek Special District, was given a second reading. Councilmembers Marcoux moved, Stobaugh seconded, to adopt the Ordinance as read. Ayes (7), Nays (0). Motion carried. (Special District #14)</p>
J-1	<p>Having no further business, Councilmembers Hanson moved, Stobaugh seconded, to adjourn the meeting. Ayes (7), Nays (0). Motion carried.</p> <div data-bbox="906 1801 1399 1927"> _____ City Clerk</div>